

Decision **PROPOSED DECISION OF ALJ ALLEN** (Mailed 4/26/2016)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Californians for Renewable Energy, Inc. (CARE) to modify Decision 06-07-027.

Application 10-09-012
(Filed September 20, 2010)

DECISION DENYING PETITION FOR MODIFICATION

Summary

This decision denies Californians for Renewable Energy, Inc.'s (CARE) Petition for Modification of Commission Decisions (D.) 14-02-045 and D.12-05-007. These decisions rejected CARE's previous attempts to re-litigate issues relating to SmartMeters¹ addressed by the Commission in D.06-07-027. CARE's Petition for Modification is a third attempt to re-litigate the same issues.

This proceeding is closed.

1. Background

In 2005, Pacific Gas and Electric Company (PG&E) filed an application requesting Commission approval for deployment of AMI and associated cost recovery. (Application 05-06-028.) In 2006, the Commission authorized PG&E to deploy AMI in Decision (D.) 06-07-027.

¹ SmartMeters is another term for advanced metering infrastructure (AMI). This decision will use the term AMI except where quoting documents that use the term SmartMeters.

In 2010, Californians for Renewable Energy (CARE) filed an application to modify D.06-07-027, asking the Commission to stay the further deployment of AMI by PG&E, and to analyze the deployment of AMI and its potential health effects under the California Environmental Quality Act (CEQA). CARE also alleged that PG&E's AMI acted as the ignition source for the 2010 San Bruno natural gas pipeline explosion. (Application 10-09-012.)

The Commission dismissed CARE's application, finding that: "CARE presents no new information concerning the health consequences of the radio frequency (RF) emissions from SmartMeters," (D.12-05-007 at 1); and: "Similarly, concerning CARE's allegation that SmartMeters were the ignition source for the San Bruno gas explosion, CARE presents no facts to support this allegation." (*Id.* at 13.) In addition, the Commission noted that CARE's argument that CEQA should apply was untimely. (*Id.* at 15.)

In 2012, CARE filed an application for rehearing of D.12-05-007 (the Commission decision dismissing CARE's 2010 application for modification of D.06-07-027). In this application for rehearing, CARE made a range of allegations, including that the Commission's decision "constitutes a violation of utility customers' federal civil rights and the First, Fourth, Fifth, and Fourteenth Amendments of the United States Constitution." (CARE Application for Rehearing at 2.)

The Commission denied CARE's application for rehearing, finding that CARE's application for rehearing failed to "set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful or erroneous." (D. 14-02-045 at 2, citing Public Utilities (Pub. Util) Code Section 1732.) In addition, CARE's application for rehearing failed to identify or explain alleged legal errors in the Decision, as required by Commission Rule 16.1:

“CARE makes vague allegations of error with little or no supporting analysis. Simply identifying a legal principle or argument, without explaining why it applies in the present circumstances or how there is legal error does not meet the requirements of section 1732 or Rule 16.1.” (*Id.*)

2. CARE’s Petition to Modify and Discussion

CARE has filed a petition to modify both D.14-02-045 and D.12-05-007, again arguing that the Commission should do a CEQA review of its 2006 decision authorizing PG&E to deploy AMI, and again arguing that AMI may have caused the San Bruno gas pipeline explosion. No responses to the petition were submitted.

This time CARE claims that the existence of improper ex parte communications between former Commission President Peevey’s office and former PG&E Executive Brian Cherry - in a different proceeding relating to PG&E’s natural gas transmission system - justifies the belated filing of its current petition (and explains CARE’s prior lack of success).

One internal PG&E e-mail from Cherry says that Peevey mentioned “SmartMeters” in recommending that PG&E, for public relations purposes, take a particular position on a ballot initiative relating to AB 32. Based on the appearance of the term “SmartMeters” in that e-mail, CARE argues:

Regarding the oral communication between PG&E’s then-Vice President of Regulatory Relations and President Michael Peevey [the Presiding Commissioner in this Application] that occurred on May 30, 2010, it provides evidence of President Peevey engaging in a civil conspiracy to violate CARE’s federal civil rights under color of state law with PG&E, as evinced by the unlawful Ex Parte communication cited above regarding the issue of a Smart Meter public relations issue that would be created for PG&E if the San Bruno natural gas explosions could be linked to the PG&E Smart Meters

installed in that neighbor mere months before the tragedy occurred. In light of these Ex Parte Communications taking place the May 30, 2010 e-mail provides irrefutable evidence of bias that would have prevented an impartial investigation by the Commission as requested in the Application for Modification, and any of CARE's proffered evidence would not have even been considered as part of the record sufficient to support Decision 12-05-007 due to that bias. The subsequent Decision 14-02-045 to deny the Application for Rehearing was also due to this bias also. (CARE Petition for Modification at 7-8.)

None of CARE's arguments have merit. CARE's Petition for Modification provides no legal, procedural or substantive basis for modifying D.14-02-045 or D.12-05-007. Attempting to retroactively apply CEQA to a Commission decision from 2006 is inconsistent with CEQA. (See, CEQA Guidelines 15002, 15003 and 15004.) The Commission proceedings relating to the San Bruno explosion have been resolved, including the imposition of a substantial penalty on PG&E. The decisions in the San Bruno proceedings did not identify any link between AMI and the San Bruno explosion. (See, D.15-04-023, D.15-04-024, and D.16-01-012.)² CARE has not shown or attempted to show that there were any improper ex parte communications in this proceeding, or that the previous decisions in this proceeding were influenced by improper ex parte communications.

Finally, CARE's specific request here is that D.14-02-045, which denied rehearing of D.12-05-007, be modified to grant rehearing of that same decision. (CARE's Petition to Modify at 19-20.) CARE is not really asking for a

² CARE filed an application for rehearing of D.15-04-024 (which imposed penalties and remedies on PG&E for the San Bruno), but that pleading did not allege that AMI played a role the explosion. (See, D.15-07-045).

modification of a prior decision, but is rather just trying to reverse the outcome of the prior decision. CARE lost in D.14-02-045 and D.12-05-007, and CARE is now asking that those decisions be changed to say that CARE won. (*Id.*) CARE has provided no basis for doing so, and the Commission declines to make that change.

3. Comments on Proposed Decision

The proposed decision of the Administrative Law Judge (ALJ) in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3. No Comments were filed.

4. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Peter V. Allen is the assigned ALJ and Presiding Officer in this proceeding.

Findings of Fact

1. D.12-05-007 denied CARE's application for modification of Decision 06-07-027, relating to advanced metering infrastructure.
2. D.14-02-045 denied CARE's application for rehearing of D.12-05-007.
3. CARE has requested that the Commission perform an after-the-fact review of D.06-07-027 pursuant to the California Environmental Quality Act.
4. CARE has not shown any connection between advanced metering infrastructure and the San Bruno natural gas pipeline explosion.
5. CARE has not shown that any decision in this proceeding was subject to or influenced by any improper *ex parte* communications.

Conclusions of Law

1. Performing an after-the-fact California Environmental Quality Act review of a 2006 Commission decision is inconsistent with the California Environmental Quality Act.
2. CARE's Petition for Modification does not provide an adequate basis for modification of Decisions 12-05-007 and 14-02-045, and should be denied.

O R D E R

IT IS ORDERED that:

1. Californians for Renewable Energy, Inc.'s Petition for Modification of Commission Decisions (D.) 14-02-045 and D.12-05-007 is denied.
2. Application 10-09-012 is closed.

This order is effective today.

Dated _____, at San Francisco, California.